

IN RE: ) In Proceedings  
 ) Under Chapter 7  
JIMMY and KAREN STARR, )  
 ) No. BK 89-40577  
Debtor(s). )

Debtors Jimmy and Karen Starr filed a Chapter 11 bankruptcy petition on June 9, 1989, and subsequently converted to Chapter 7 on May 1, 1990. In their amended schedules filed June 20, 1990, debtors listed as exempt a 1978 Firebird automobile (each debtor claimed a \$250.00 exemption in the automobile), and tools and equipment having a total value of \$2,626.00. No objections to exemptions were filed within the time prescribed by Rule 4003(b). However, on November 19, 1990, the Trustee filed an application to sell personal property, requesting authority to sell, among other items, the Firebird and tools and equipment claimed by debtors as exempt. Debtors filed an objection to the Trustee's application, contending that the Trustee was not entitled to sell the property since it was exempt and no longer part of the bankruptcy estate. The Court overruled debtors' objection and entered an order (1) allowing the Trustee's application to sell, and (2) directing the Trustee to pay to debtors from the proceeds of the sale \$2,626.00 in satisfaction of their allowed exemptions.

Debtors have filed a motion to reconsider and request that the Court vacate its order allowing the Trustee's application to sell. Debtors argue that they are entitled to retain the articles

they claimed as exempt, and are not required to accept proceeds from the sale of those items in lieu of the articles themselves. In support of their argument, debtors cite Ill. Rev. Stat. ch. 110, ¶12-1002, which provides, in part, as follows:

It shall not be necessary for the debtor against whom a judgment or attachment was entered or distress warrant was issued to make a schedule of his or her personal property to enable him or her to secure the exemption and to retain the property enumerated in paragraph (b) of Section 12-1001 of this Act, but when-ever any debtor against whom a judgment or attachment was entered or distress warrant was issued, desires to avail himself or herself of the benefit of this Act to make a selection of certain household furniture ... or to select other personal property instead of household furniture or to select part household furniture and part other personal property he or she shall, within 10 days after a copy of the judgment, attachment or distress warrant is served upon him or her in the same manner as summonses are served in other civil cases, such copies of the judgment, attachment or distress warrant to have endorsed thereon a notice signed by the officer having such document, notifying the debtor that he or she must file a schedule of his or her property within 10 days from the service thereof in order to claim his or her exemption under Part 10 of Article XII of this Act, whereupon the debtor shall make a schedule of all his or her personal property of every kind and character ... and shall deliver the same to the officer having the certified copy of the judgment, attachment or distress warrant, or file the same in the court which entered the document ... and thereupon the court which entered the judgment or attachment or issued the distress warrant shall summon 3 householders, who, after being duly sworn to fairly and impartially appraise the property of the debtor, shall fix a fair valuation upon each article contained in such schedule, and the debtor shall then select from such schedule the articles he or she may desire to retain, the aggregate value of which shall not exceed the amount exempted, to which he or she may be entitled....

Ill. Rev. Stat. ch. 110, ¶12-1002. It is unclear whether this statute applies in bankruptcy proceedings, and if so, whether its provisions have been complied with in the present case.<sup>1</sup> Regardless of the statute's applicability, other cases discussing the issue now before the Court suggest that debtors are indeed entitled to retain the articles they claim as exempt. See, e.g., Matter of Patterson, 825 F.2d 1140 (7th Cir. 1987); Middleton v. Farmers State Bank of Fosston, 45 B.R. 744 (Bankr. D. Minn. 1985). After further consideration, the Court agrees. As stated by the court in Matter of Patterson, "[t]he idea behind the exemption is that the debtor will hang on to his tools so that he can continue in his trade despite having gone broke. If he divests himself of the tools, preferring cash, the purpose of the exemption can no longer be fulfilled." Matter of Patterson, 825 F.2d at 1145.<sup>2</sup>

Accordingly, IT IS ORDERED that the debtors' objection to the Trustee's application to sell is ALLOWED. Debtors shall select, from the property listed as exempt, those items they desire to retain, the aggregate value of which shall not exceed the amount allowed under the Illinois exemption statute. The Court's January 14, 1991 Order

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<sup>1</sup>The Trustee indicated at the hearing on debtors' motion to reconsider that she was not familiar with this particular statute. Neither party has cited any cases interpreting the statute, nor has either party discussed whether or not its requirements have been satisfied in this case.

<sup>2</sup>Obviously, the property exempted cannot exceed in value the amount allowed by the Illinois exemption statute, and the Trustee is entitled to object if he or she believes the property to be worth more than the allowed exemptions.

Authorizing Sale of Personal Property is VACATED.<sup>3</sup>

----- /s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: April 4, 1991

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<sup>3</sup>The order authorizing the sale of property also allowed the Trustee to sell the right to use the debtors' business telephone numbers. Debtors dispute the Trustee's right to do so on the basis that the telephone numbers are property of Illinois Bell Telephone Company, and have offered to pay the Trustee \$100.00 to retain the right to use those numbers. As discussed at the hearing on the motion to reconsider, since the Court has vacated its prior order allowing the sale, the Trustee is free to reopen bidding with regard to the sale of the telephone numbers.